

**Frate Service, Inc. and Thomas R. Moore, Sr., and International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union #627. Cases 33-CA-4193, 33-CA-4256, and 33-CA-4911**

March 20, 1981

### DECISION AND ORDER

On March 26, 1979, Thomas R. Moore, Sr. (hereinafter called Moore), a Charging Party herein, filed a charge in Case 33-CA-4193 against Frate Service, Inc. (hereinafter called Respondent), alleging violations of Section 8(a)(1) and (3) of the National Labor Relations Act (hereinafter called the Act).

On April 27, 1979, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union #627 (hereinafter called the Union), a Charging Party herein, filed charges in Case 33-CA-4256 against Respondent alleging violations of Section 8(a)(1), (3), and (5) of the Act; and on July 13, 1979, filed an amended charge against Respondent alleging further violations of Section 8(a)(1) and (5) of the Act.

Thereafter, under the direction of the Regional Director for Region 33, an investigation of the allegations set forth in the charges set out above was conducted.

On June 19, 1979, the Regional Director issued a complaint and notice of hearing in Case 33-CA-4256. On July 2, 1979, Respondent filed an answer to the complaint admitting in part, but denying in part, certain allegations of the complaint.

The Regional Director on August 31, 1979, issued an order consolidating cases, consolidated complaint, and notice of hearing in Cases 33-CA-4256 and 33-CA-4193.

Respondent on September 14, 1979, filed an answer to the consolidated complaint admitting certain allegations and denying others. Specifically, Respondent alleges that employee Moore was discharged for good cause related solely to his work as a truckdriver. Respondent also denies that it had voluntarily recognized the Union, but states that it was coerced into such recognition. Finally, Respondent denies that the Union had ever requested that Respondent bargain collectively with the Union with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive bargaining representative of all drivers and driver-helpers, with statutory exclusions, employed by Respondent at its East Peoria, Illinois, facility. Respondent therefore asks that the consolidated complaint be dismissed.

On October 19, 1979, the Regional Director approved separate bilateral informal Settlement

Agreements in Cases 33-CA-4193 and 33-CA-4256, thereby withdrawing the complaints previously issued in said cases.

The Union on June 23, 1980, filed a charge against Respondent in Case 33-CA-4911, alleging violations of Section 8(a)(1) and (5) of the Act, and on July 31, 1980, filed a first amended charge in said case, effectively withdrawing some portions of the original charge filed on June 23, but continuing to allege that Respondent, since December 28, 1979, and continuing to date, has refused to bargain in good faith by repudiating the collective-bargaining agreement with Local 627, has repudiated its obligation to make contributions to the health, welfare, and pension funds, and has refused to provide information necessary to administer the collective-bargaining agreement, allegations previously contained in Case 33-CA-4256.

Thereafter the Regional Director caused an investigation of the allegations to be conducted of said charges, and, on July 31, 1980, the Regional Director issued an order withdrawing approval of settlement agreements, consolidating cases, consolidated complaint, and notice of hearing in cases 33-CA-4193, 33-CA-4256, and 33-CA-4911. Respondent did not file an answer to the consolidated complaint of July 31, 1980.

Thereafter, on October 22, 1980, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, with exhibits attached, requesting issuance of a Board Order based on the allegations of the complaint. On November 3, 1980, the Board issued its order transferring the proceeding to the Board and Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. No response to the Notice To Show Cause has been received by the Board.

Upon the entire record in this proceeding, the Board makes the following:

#### Ruling on the Motion for Summary Judgment

In the Motion for Summary Judgment herein, counsel for the General Counsel avers that Respondent has failed to file an answer to the order withdrawing approval of the settlement agreement, consolidated cases, consolidated complaints, and notice of hearing; and that under Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, the Board should find the allegations of the complaint to be true and issue an order based upon such findings. However, as the Motion for Summary Judgment correctly sets forth, Respondent did in fact file an answer to the original complaint and notice of hearing issued June 19, 1979, and it also filed an answer to the consolidated com-

plaint and notice of hearing issued on August 31, 1979. In both answers, Respondent denied the commission of any unfair labor practices. As noted above, the substantive allegations of the consolidated complaint are substantially the same as those contained in the consolidated complaint issued on July 31, 1980. Thus, Respondent has in fact answered those allegations, and, in doing so, has denied the commission of any unfair labor practices, has alleged affirmative defenses, and has thereby raised litigable issues. In our view, granting a motion for summary judgment pursuant to Section 102.20 of the Board's Rules, in the cases involving the same parties and allegations to which answers have been filed by the respondent, is not appropriate in the circumstances here present.<sup>1</sup> We shall therefore deny the motion.

### ORDER

It is hereby ordered that the General Counsel's Motion for Summary Judgment in the above-captioned proceeding be, and it hereby is, denied.

IT IS FURTHER ORDERED that the above-entitled proceeding be, and it hereby is, remanded to the Regional Director for Region 33 for further appropriate action.

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<sup>1</sup> *Atlantic Business and Community Development Corporation, d/b/a WUSS Radio*, 236 NLRB 1529 (1978); *E. E. Sousa, Inc., d/b/a Nottingham Restaurant*, 243 NLRB 567 (1979).